

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

THIS DOCUMENT RELATES TO
TRACK 2 SETTLEMENT

Master Civil No. 01-cv-12257

MDL No. 1456

Judge Patti B. Saris

**PLAINTIFFS' MOTION TO COMPEL THE DEPOSITION OF
CORINNA CONNICK**

Pursuant to Fed. R. Civ. P. 37 and Local R. Civ. P. 37.1, Class Counsel seek an order compelling Corinna Connick to appear for a deposition and answer questions regarding her pending appeal of this Court's August 29, 2011 ruling and Plaintiffs' Motion for Imposition of Appeal Bond Under Federal Rule of Appellate Procedure 7 [Docket Nos. 7887 and 7888]. As grounds for the foregoing, Class Counsel state as follows:

1. On March 4, 2009, Ms. Connick sought to intervene in the Track 2 Settlement pursuant to Fed. R. Civ. P. 24 on behalf of other similarly-situated consumers. *See* Dkt. No. 5941. On March 24, 2009, Class Counsel Jennifer Fountain Connolly took Ms. Connick's deposition on issues related to her standing as an objector and the grounds for her filings.

2. On August 29, 2011, after considering the facts, briefs and oral argument, this Court determined that the drug Ms. Connick allegedly took was not a part of the Track 2 settlement and, therefore, she was and is not part of the Class, as she is not being required to give a release as a result of the settlement. *See* August 8, 2011 Hearing Tr. at p. 81-82; Dkt. No. 7770 (denying motion to intervene). On September 27, 2011, Ms. Connick filed a *pro se* notice of appeal of the Court's order denying her Motion to Intervene. *See* Dkt. No. 7822.

3. Recognizing the likelihood of Ms. Connick's appeal delaying distribution of the Track 2 settlement funds, on November 4, 2011, Class Counsel moved pursuant to Fed. Rule of App. Proc. 7 that Ms. Connick be ordered to post a bond pending her appeal. Dkt. Nos. 7887, 7888. Subsequently, Plaintiffs served Ms. Connick through the LexisNexis File & Serve System with a notice of deposition, scheduled for November 18, 2011 at 9:30 a.m. at the office of Squire, Sanders & Dempsey LLP in Cleveland, Ohio. *See* Notice of Deposition, attached hereto as Ex.

1. The purpose of the deposition was to determine Ms. Connick's willingness and ability to post the bond requested, as well as to explore the basis of the *pro se* notice of appeal which would hold up distribution of settlement proceeds to a Class of which Ms. Connick is not a member. Plaintiffs believe that both these issues are important and highly relevant to the pending Motion for Imposition of Appeal Bond.

4. After numerous phone conversations and email communications, Class Counsel was informed by Thomas J. Connick, Ms. Connick's husband and an attorney in Cleveland who has since filed an appearance on her behalf, that Ms. Connick would refuse to appear for her deposition under any circumstances. *See* Ex. A to Plaintiffs' Motion for Leave to File Supplemental Memorandum In Support of Motion for Imposition of Appeal Bond Against Corinna Connick Under Federal Rule of Appellate Procedure 7, filed simultaneously herewith for a full factual recitation, declaration from Kenneth A. Wexler, details concerning each communication between counsel on this issue, and supporting exhibits.

5. In lieu of appearing, and without attempting to seek relief from this Court, Ms. Connick *sued* Class Counsel Kenneth A. Wexler and his firm, Wexler Wallace LLP, in federal district court in Ohio, seeking declaratory and injunctive relief, as well as attorneys' fees, costs and interest, in connection with the deposition notice.

6. Plaintiffs' Motion to Compel should be granted. By filing a motion to intervene and a notice of appeal, Ms. Connick has submitted herself to this Court's jurisdiction. Her deposition was appropriately noticed, and its purpose is directed to the issue now squarely before the Court, i.e., whether to order Ms. Connick to post a bond pending her appeal. Whether *pro se* or represented by counsel, Ms. Connick has no right to simply ignore a deposition notice, particularly where, as here, the deposition concerns delay of payment to an elderly, sick and dying Class, of which *Ms. Connick is not even a member*. Plaintiffs have offered to take Ms. Connick's deposition at a time that accommodates her, but she has outright refused to appear.

7. Plaintiffs incorporate the remaining factual allegations and exhibits provided in their [Proposed] Supplemental Memorandum In Support of Motion for Imposition of Appeal Bond Against Corinna Connick Under Federal Rule of Appellate Procedure 7, attached as Exhibit A to their Motion for Leave to File the Supplemental Memorandum, also filed November 21, 2011, as if fully set forth herein.

COMPLIANCE WITH LOCAL RULE OF CIVIL PROCEDURE 37.1

The undersigned counsel affirms that he has complied with Local Rule 37.1.

WHEREFORE, Class Counsel respectfully request that this Court grant their Motion to Compel the Deposition of Corinna Connick, and all other relief that this Court deems just and proper.

Respectfully submitted,

DATED: November 21, 2011

_____/s/ Kenneth A. Wexler

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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I, Kenneth A. Wexler, caused a true and correct copy of the foregoing *PLAINTIFFS' MOTION TO COMPEL THE DEPOSITION OF CORINNA CONNICK* be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on November 21, 2011 a copy to LexisNexis File and Serve for Posting and notification to all parties.

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